

Counsel for Defendant in Error.

parties or their assigns might appear." The complainant as an "assign" holds title to one-thirty-secondth interest of those profits. The bill clearly discloses his right thereto, and I fail to see upon what principle Taylor can dispute his claim or deny the account which he seeks. To allow him to do so, under the allegations in this bill, and upon the ground on which it is rested, that the State did not assent to the complainant's acquisition of the interest he holds, is not only a perversion of right and justice, but finds no sanction or support in either principle or authority.

MR. JUSTICE SHIRAS concurs in this dissent.

MR. JUSTICE WHITE was not a member of the court when this case was argued, and took no part in its decision.

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## NORTHERN PACIFIC RAILROAD COMPANY v. BOOTH.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF MINNESOTA.

No. 327. Submitted March 28, 1894. — Decided April 9, 1894.

The verdict and judgment in the court below having been for \$5000, and that judgment having been a few days later amended on the motion — apparently *ex parte* — of the defendant, by adding to it the sum of \$116.73, interest, this court, as the defendant made the motion with the sole object of obtaining a writ of error not otherwise allowable, declines to permit what was done to be efficacious in the accomplishment of the purpose designed, and dismisses the writ of error.

THE case is stated in the opinion.

*Mr. James McNaught, Mr. A. H. Garland, and Mr. H. J. May* for plaintiff in error.

*Mr. C. D. O'Brien* for defendant in error.

## Opinion of the Court.

THE CHIEF JUSTICE: This was an action to recover damages for the death of Fred. D. Booth, alleged to have been occasioned by the wrongful act or omission of the defendant, brought under the statute of the State of Minnesota in that behalf, which limited the recovery to not exceeding five thousand dollars. The case being tried to a jury resulted in a verdict in plaintiff's favor, January 10, 1890, for five thousand dollars, and, after motions for a new trial and in arrest had been overruled, judgment was rendered for that amount on May 12, 1890. On the following nineteenth of May the Circuit Court, on motion of the defendant's counsel, apparently made *ex parte*, ordered the judgment to be amended so as to read that the plaintiff recover the sum of five thousand dollars, "the amount found to be due by the jury, together with the sum of one hundred and sixteen and  $\frac{73}{100}$  dollars, (\$116.73,) the amount of interest thereon from the rendition of the verdict to date."

These proceedings were had at December term, 1889. On July 3, 1890, one of the days of the succeeding June term, plaintiff moved the court to vacate the amendatory order of May 19, which motion was overruled. Defendant thereafter sued out this writ of error. But the writ cannot be maintained unless it appear that the matter in dispute, exclusive of costs, exceeds the sum or value of five thousand dollars, and in this case the judgment would be the measure of the jurisdiction. As originally rendered this did not exceed that sum, and we are of opinion that it could not be amended on motion of the defendant by the addition of an amount not claimed by plaintiff, so as to bring the case within our jurisdiction. Since the defendant confessedly made its motion with the sole object of obtaining a writ of error not otherwise allowable, and, in doing so, conceded that the amount sought to be added was not in dispute, we decline to permit what was done to be efficacious in the accomplishment of the purpose designed.

*Writ of error dismissed.*